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FOLLOWING REPEAT BONN 03140 ACTION SECSTATE FEB 21.

QUOTE S E C R E T BONN 03140

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DEPARTMENT PLEASE REPEAT TO LONDON, PARIS, MOSCOW,
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SUBJECT: SALT AND NON-CIRCUMVENTION: THE BERLIN
CONNECTION

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BEGIN SUMMARY. GENSCHER AND OTHER SENIOR GERMAN
OFFICIALS HAVE REFERRED SEVERAL TIMES, IN BILATERAL
CONSULTATIONS ON SALT, TO EXPERIENCE WITH THE
QUADRIpartite AGREEMENT ON BERLIN AS A BASIS FOR THEIR
CONCERNS OVER SOVIET INSISTENCE ON A NON-CIRCUMVENTION
CLAUSE IN SALT II. PERHAPS IT IS BECAUSE, IN THEIR
CLOSENESS TO THE BERLIN PROBLEM, THEY HAVE VOICED THOSE
CONCERNS IN THE TERMINOLOGY IN WHICH BERLIN ISSUES ARE
DEBATED THAT THEIR OBJECTIONS HAVE COME THROUGH AS
ABSTRACT LEGALISMS. FOR THE GERMANS, THE PROBLEMS THEY

ANTICIPATE ARE VERY REAL. WE TRY IN THIS REPORT TO EXPLAIN SOMEWHAT MORE CLEARLY THAN THE GERMANS HAVE DONE WHAT IT IS THEY HAVE IN MIND.

I HAS BECOME A TRUISM THAT, IF THERE HAD BEEN NO AMBIGUITIES AND NO GRAY AREAS, IT WOULD NOT HAVE BEEN POSSIBLE TO CONCLUDE THE QUADRIPARTITE AGREEMENT (QA) IN 1971. THE SAME MAY BE TRUE OF SALT TODAY. BUT WHAT THE GERMANS ARE SEEKING TO AVOID, TO THE EXTENT POSSIBLE, IS A BUILT-IN MECHANISM WHICH THE SOVIETS CAN USE TO INHIBIT IMPROVEMENTS OF THEATER DEFENSES OR TO APPLY POLITICAL PRESSURE ON THE FRG AND THE OTHER EUROPEAN ALLIES.

THE GERMANS ACCEPT AS LEGALLY SOUND OUR INTERPRETATIONS OF THE PRINCIPLES OF INTERNATIONAL LAW INVOLVED. THEY RECOGNIZE, FOR EXAMPLE, THAT STATES WHICH ARE NOT PARTIES TO AN AGREEMENT MAY NOT BE BOUND BY IT. YET THE FACT THAT THE FRG IS NOT A PARTY TO THE QA HAS NOT PREVENTED THE SOVIETS FROM USING ALLEGED FRG VIOLATIONS OF THAT AGREEMENT AS AN ELEMENT OF POLITICAL PRESSURE IN THEIR BILATERAL RELATIONS. THE GERMANS SEE SIMILAR
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HAZARDS IN NON-CIRCUMVENTION LANGUAGE IN SALT, PARTICULARLY IF THAT LANGUAGE REFERS SPECIFICALLY TO "OTHER STATE OR STATES" -- WORDING WHICH IN CONTEXT THEY SEE AS MEANING PRIMARILY THE FRG.

OUR SUGGESTION THAT THE NEGOTIATING HISTORY WILL OBVIATE FUTURE DIFFICULTIES IS ALSO NOT OVERLY REASSURING TO THE GERMANS. THEIR RELIANCE ON THE NEGOTIATING HISTORY OF THE QA TO JUSTIFY CERTAIN ACTIVITIES IN BERLIN HAS NOT ALWAYS BEEN SUCCESSFUL, AND THEY PERCEIVE A TENDENCY ON THE PART OF THE THREE WESTERN ALLIES TO AGREE ON OCCASION WITH THE SOVIETS THAT POLITICAL CONSIDERATIONS TAKE PRECEDENCE OVER WHAT IS LEGALLY PERMISSIBLE UNDER THE TERMS OF THE QA.

WE ASSUME THAT, IN THE END, THE GERMANS WILL ACCEPT REALITY AND WILL NOT OPPOSE SALT II BECAUSE OF THEIR CONCERNS OVER THE NON-CIRCUMVENTION LANGUAGE. BUT GIVEN THE CRITICAL NEED FOR FULL ALLIED SUPPORT FOR SALT, IT IS INCUMBENT ON US, FIRST OF ALL, TO UNDERSTAND THE BASIS FOR THE GERMAN CONCERNS OVER THIS ISSUE AND, SECONDLY, TO BE AS SPECIFIC AS POSSIBLE IN ESTABLISHING FOR THE RECORD, BOTH WITH OUR ALLIES AND WITH THE SOVIETS, OUR OWN INTERPRETATIONS AND INTENTIONS WITH REGARD TO NON-CIRCUMVENTION.
END SUMMARY.

1. WE AND THE GERMANS ARE TO SOME EXTENT TALKING PAST

EACH OTHER IN THE DIALOGUE ON NON-CIRCUMVENTION. THE IMPORTANCE OF A NON-CIRCUMVENTION CLAUSE TO THE OVER-ALL SALT NEGOTIATION IS AN ISSUE OUTSIDE EMBASSY COMPETENCE, AND WE DO NOT COMMENT ON THE MERITS OF THE ISSUE. BUT BECAUSE OF THE CRITICAL IMPORTANCE OF HAVING THE SUPPORT OF OUR ALLIES -- INCLUDING ESPECIALLY THE FRG -- AS WE CONCLUDE SALT II AND MOVE INTO SALT III, WE OFFER HERE SOME BACKGROUND ON WHY THE FRG REMAINS CONCERNED

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AT THE IMPLICATIONS OF A US CONCESSION ON NON-CIRCUMVENTION.

2. THE GERMANS FAVOR SALT II, BUT ONLY IF THE STABILITY WHICH IT BRINGS IN WHAT FOR THE US IS THE STRATEGIC RANGE DOES NOT ENDANGER STABILITY IN THE EUROPEAN THEATER. THEY HAVE NOT THOUGHT THROUGH THE FUTURE NEEDS FOR MAINTAINING THE THEATER BALANCE, WITH REGARD TO CRUISE MISSILES FOR INSTANCE, BUT THEY DO NOT WISH OPTIONS TO BE FORECLOSED PREMATURELY. WE HAVE ASSURED THE FRG THAT A NON-CIRCUMVENTION CLAUSE WOULD NOT INHIBIT DEFENSE EFFORTS OF AND FOR THE EUROPEAN ALLIES. THE GERMANS ARE NOT SO SURE.

3. WHEN THE GERMANS TELL US -- AS STATE SECRETARY VAN WELL TOLD AMBASSADOR WARNKE ON DECEMBER 2, AND AS FOREIGN MINISTER GENSCHER MORE RECENTLY TOLD SECRETARY VANCE (REFS C AND E) -- THAT THEIR EXPERIENCE WITH THE BERLIN AGREEMENTS MAKES THEM WARY OF SOVIET MOTIVES IN PRESSING FOR NON-CIRCUMVENTION LANGUAGE IN SALT, IT IS IMPORTANT TO UNDERSTAND WHAT THEY ARE SAYING. GENSCHER IS UNABLE TO HAVE A DISCUSSION WITH GROMYKO WHICH IS NOT DOMINATED BY DISPUTES OVER ALLEGED GERMAN EFFORTS TO DESTROY THE BALANCE WHICH WAS ESTABLISHED BY THE 1971 QUADRIPARTITE AGREEMENT ON BERLIN. NOR IS THE CHANCELLOR HIMSELF IMMUNE FROM SUCH DIFFICULTIES. WHILE THERE ARE MORE IMPORTANT ISSUES THAN BERLIN FOR DISCUSSION AT THE SUMMIT LEVEL, INABILITY TO SCHEDULE BREZHNEV'S RETURN VISIT TO BONN HAS BEEN IN NO SMALL PART DUE TO CONTINUED SOVIET REFUSAL TO CONCEDE AN FRG ROLE VIS-A-VIS BERLIN WHICH THE GERMANS THOUGHT HAD BEEN ACCEPTED IN THE QA.

4. AT THE OFFICIAL LEVEL, TWO OF THE KEY PLAYERS ON

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SALT IN THE FOREIGN OFFICE -- VAN WELL AND POLITICAL DIRECTOR KLAUS BLECH -- HAVE BEEN ENGROSSED IN BERLIN ISSUES SINCE THE DAYS OF THEIR INTIMATE INVOLVEMENT IN THE NEGOTIATIONS WHICH LED TO THE QA. ALL OF THE SEEMINGLY LEGALISTIC OBJECTIONS TO THE NON-CIRCUMVENTION

CLAUSE WHICH THE GERMANS VOICED DURING THE JANUARY 30 BILATERAL CONSULTATIONS (REF D) ARE DIRECT REPLAYS OF ON-GOING ARGUMENTS WITH THE SOVIETS OVER THE INTERPRETATION OF THE QA. FOR THE GERMANS, THESE ARGUMENTS ARE FAR FROM ABSTRACT BUT ARE DIRECTLY RELATED TO WHAT FOR THEM IS A VITAL ISSUE -- THE FUTURE OF BERLIN AND THE UNRESOLVED GERMAN QUESTION.

5. SOME EXAMPLES OF ON-GOING BERLIN PROBLEMS MAY SERVE TO CLARIFY THE SORTS OF THE CONCERNS THE GERMANS HAVE IN MIND:

-- NOWHERE IN THE LANGUAGE OF THE QA IS THERE A SPECIFIC REFERENCE TO THE MANY FEDERAL INSTITUTIONS AND AGENCIES WHICH HAVE BEEN ESTABLISHED IN BERLIN, WITH ALLIED CONSENT, THROUGH THE YEARS. IT IS UNLIKELY THAT THE GERMANS WOULD HAVE ACCEPTED THE QA HAD IT CALLED FOR A SHUTTING DOWN OF THOSE INSTITUTIONS. TODAY, HOWEVER, THE SOVIETS INCREASINGLY DIRECT THEIR PROTESTS AT THE LOCATION AND ACTIVITIES OF THOSE INSTITUTIONS. MORE OFTEN THAN NOT SUCH PROTESTS HAVE ONLY NUISANCE VALUE. YET WHEN THEY ARE CIRCULATED CONSTANTLY IN INTERNATIONAL FORA, IN OPPOSITION TO THE PARTICIPATION OF OFFICIALS FROM BERLIN IN THE WORK OF A MULTITUDE OF SPECIALIZED AGENCIES, THE GERMANS FEAR THAT THE IMPRESSION THAT THEY ARE SOMEHOW IN VIOLATION OF INTERNATIONAL LAW WILL GRADUALLY GAIN ACCEPTANCE AND THAT THE CUMULATIVE PSYCHOLOGICAL EFFECT ON THE INDIVIDUAL OFFICIALS WHO ARE THE TARGETS OF THE PROTESTS WILL HAVE A LONG-RANGE NEGATIVE IMPACT ON THE VIABILITY OF BERLIN. MOREOVER, IT IS THE RIGHT OF OFFICIALS FROM FEDERAL
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INSTITUTES IN BERLIN TO PARTICIPATE IN EXCHANGES WHICH IS AT THE HEART OF THE IMPASSE OVER CONCLUSION OF BILATERAL AGREEMENTS WITH THE SOVIET UNION AND ITS WARSAW PACT ALLIES, THUS EFFECTIVELY BRAKING THE DEVELOPMENT OF RELATIONS WITH THOSE COUNTRIES.

-- BERLIN'S INCLUSION IN THE AREA OF APPLICABILITY OF THE EUROPEAN COMMUNITY TREATIES -- A RELATIONSHIP WHICH HAS EXISTED SINCE 1957 -- WAS NOT CHALLENGED DURING THE QA NEGOTIATIONS, NOR IS THERE ANY SPECIFIC PROVISION OF THE AGREEMENT WHICH WOULD NECESSITATE A CHANGE IN THAT RELATIONSHIP. OVER THE PAST TWO YEARS, HOWEVER, AS THE EC HAS MADE CONCRETE MOVES TOWARD CLOSER POLITICAL INTEGRATION, THE SOVIETS HAVE BECOME INCREASINGLY VOCAL IN CHALLENGING THE BERLIN-EC RELATIONSHIP. THERE IS CONCERN THAT A CRUNCH MAY COME WHEN DIRECT ELECTIONS FOR THE EUROPEAN PARLIAMENT ARE HELD (EVEN THOUGH THE ALLIES HAVE RULED THAT BERLINERS MAY NOT PARTICIPATE IN THE ELECTIONS AND

THAT THEIR REPRESENTATIVES MUST CONTINUE TO BE CHOSEN INDIRECTLY). NEGOTIATIONS BETWEEN THE EC AND CEMA COUNTRIES POSE ANOTHER CONCRETE PROBLEM. THE SOVIETS HAVE SO FAR NOT BUDGED FROM THEIR POSITION THAT THE EC CAN EXPRESS NO COMPETENCE WITH REGARD TO BERLIN, WHILE THE GERMANS HAVE MADE IT CLEAR THAT THERE WILL BE NO EC AGREEMENTS WITH THE EAST IF BERLIN IS NOT INCLUDED.

6. THE FRG WAS NOT A PARTY TO THE QA, TO BE SURE, AND FOR THE RECORD, AT LEAST, FORMAL SOVIET PROTESTS ARE DIRECTED TO THE THREE WESTERN ALLIES. BUT TO THE EXTENT THAT THE QA GOVERNS CERTAIN OF THE RELATIONSHIPS BETWEEN BERLIN AND THE FRG, THE FRG IS AN OBJECT OF THE QA -- AND THE SOVIETS WITH INCREASING FREQUENCY ASSERT
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THAT THE GERMANS MUST ANSWER TO THEM FOR THEIR ACTIONS IN BERLIN. THEY HAVE ALSO MANAGED TO AROUSE SUSPICIONS BY TELLING THE GERMANS BILATERALLY THAT THERE WERE "UNDERSTANDINGS" AMONG THE FOUR POWERS ON THE MARGINS OF THE QA WHICH WOULD LIMIT FUTURE FRG ACTIVITIES IN BERLIN.

7. IT THUS IS NOT OVERLY REASSURING FOR THE GERMANS WHEN WE TELL THEM THAT STATES WHICH ARE NOT PARTIES TO A TREATY CANNOT BE BOUND BY IT. THEY DO NOT WISH TO BECOME THE UNNAMED OBJECT OF A SALT TREATY, YET THEY SEE NON-CIRCUMVENTION LANGUAGE -- PARTICULARLY IF IT WERE TO REFER TO "OTHER STATE OR STATES" -- AS POINTING DIRECTLY AT THEMSELVES.

8. AT A RECENT DINNER WHICH HE GAVE IN HONOR OF A SENIOR FOREIGN OFFICE OFFICIAL, SOVIET AMBASSADOR FALIN ADDRESSED SOME OF HIS AFTER-DINNER REMARKS TO THE FAVORITE SOVIET THEME OF FRG TRANSGRESSIONS IN BERLIN. THE QA, HE SAID -- WHILE IMPORTANT TO THE FRG FOR OTHER REASONS -- WAS PRIMARILY IMPORTANT TO THE SOVIET UNION AS A FUNCTION OF ITS RELATIONS WITH THE US. IT HAD BEEN THE FIRST MAJOR BREAKTHROUGH IN US-SOVIET RELATIONS AFTER THE COLD WAR, AND ITS SIGNATURE HAD BEEN PRECEDED BY HEATED DEBATE IN THE POLITBURO. GROMYKO, AFTER INITIALLY HAVING OPPOSED IT, HAD EVENTUALLY ADVOCATED ITS SIGNATURE. NOW, FALIN CONTINUED, POLITBURO DEBATES ON SALT INVARIABLY GOT AROUND TO DISCUSSION OF THE EXPERIENCE WITH THE QA -- WITH GROMYKO STARING AT THE CORNER BECAUSE ALL EYES WERE ON HIM.

9. FALIN'S BASIC MESSAGE -- THAT THE FRG, BY NOT LIVING UP TO THE OBLIGATIONS IMPOSED UPON IT BY THE QA, WAS ENDANGERING DETENTE -- WAS NOT A NEW ONE. WHILE WE HAD NOT PREVIOUSLY HEARD THAT ANY SOVIET OFFICIAL HAD GONE SO FAR AS TO SUGGEST THAT THE FRG'S BERLIN POLICIES

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WERE ALSO JEOPARDIZING THE SALT PROCESS, IT STRIKES US THAT THERE IS AN INTERESTING BIT OF MIRROR IMAGERY HERE. THERE IS AT LEAST AN IMPLICATION IN FALIN'S REMARKS THAT SOIVET EXPERIENCE WITH THE QA COULD HAVE A BEARING ON MOSCOW'S INSISTENCE ON NON-CIRCUMVENTION LANGUAGE IN SALT; IT IS THAT SAME EXPERIENCE WHICH PROMPTS THE GERMANS TO OPPOSE IT.

10. WE DO NOT PROPOSE HERE TO GET INTO THE RIGHTS AND WRONGS OF THE RESPECTIVE SOVIET AND GERMAN INTERPRETATIONS OF THE QA. SUFFICE IT TO SAY THAT NEITHER SIDE HAS BEEN ABOVE EFFORTS TO RESOLVE THE AMBIGUITIES IN THE QA IN ITS FAVOR. NEVERTHELESS, IT MAY BE USEFUL FOR BETTER UNDERSTANDING OF THE GERMAN ARGUMENTS ON NON-CIRCUMVENTION TO PURSUE THE SUBJECT A BIT FURTHER.

11. MOST OF THE GERMAN ACTIVITIES VIS-A-VIS BERLIN WHICH THE SOVIETS FIND OBJECTIONABLE ARE, FROM THE GERMAN STANDPOINT, LEGITIMATE MANIFESTATIONS OF THE "TIES" BETWEEN THE FRG AND BERLIN WHICH, ACCORDING TO THE QA, "WILL BE MAINTAINED AND DEVELOPED." THE SOVIETS FOR THEIR PART RARELY POINT TO A SPECIFIC PROHIBITION IN THE QA TO JUSTIFY THEIR PROTESTS, BUT RATHER TO THE GENERAL QUALIFICATION TO THIS PROVISION ON THE "TIES" -- THE REAFFIRMATION IN THE QA OF THE HISTORIC ALLIED POSITION THAT THE WESTERN SECTORS OF BERLIN CONTINUE NOT TO BE A CONSTITUENT PART OF THE FRG AND NOT TO BE GOVERNED BY IT. THEY TREAT THIS LANGUAGE IN EFFECT AS A CATCH-ALL PROVISION ON NON-CIRCUMVENTION, POINTING TO ALMOST ANY MANIFESTATION OF THE FEDERAL PRESENCE IN BERLIN AS AN ATTEMPT TO CLAIM THAT BERLIN IS A PART OF THE DD.

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12. GIVEN THIS CONTINUING DIFFICULTY, OUR SUGGESTION THAT THE NEGOTIATING HISTORY ON NON-CIRCUMVENTION WILL OBIVATE FUTURE DIFFICULTIES IS UNLIKELY TO BE FULLY PERSUASIVE. THE GERMANS HAVE HAD MIXED SUCCESS IN RELYING ON THE NEGOTIATING HISTORY OF THE QA. THE COMMENTARY PREPARED AT THE CONCLUSION OF THE QA NEGOTIATIONS BY THE THREE ALLIED POLITICAL ADVISORS -- VAN WELL'S COUNTERPARTS -- STATES THAT THROUGHOUT THE NEGOTIATIONS THE WESTERN SIDE MADE IT CLEAR THAT THEY PROCEEDED FROM THE PRINCIPLE THAT EVERYTHING NOT PROHIBITED BY THE TEXT OF THE AGREEMENT WAS PERMITTED, AND THAT THE SOVIETS NEVER REJECTED THAT PREMISE. IN SUBSEQUENT YEARS, HOWEVER, THE SOVIETS HAVE MADE IT

CLEAR THAT THEY DO NOT ACCEPT THAT PRINCIPLE, WHILE FOR THEIR PART THE ALLIES HAVE NOT REACTED ENTHUSIASTICALLY TO GERMAN REQUESTS THAT THE PRINCIPLE BE CLEARLY REAFFIRMED. MORE TO THE POINT, THE GERMANS SEE IN THE LATTER-DAY ALLIED RULE THAT PROPOSED ACTIVITIES IN BERLIN MUST BE VIEWED NOT ONLY FOR LEGALITY BUT FOR "POLITICAL OPPORTUNENESS" AN IMPLICIT WEAKENING OF THAT PRINCIPLE IN RESPONSE TO SOVIET PRESSURES.

13. BLECH CONCEDED TO THE CHARGE ON FEBRUARY 20 THAT THE GERMANS WERE REALISTIC AND WOULD, HE IMPLIED, ACCEPT NON-CIRCUMVENTION IF THE US ASSURED THEM IT WAS INEVITABLE. THEY INTEND, HOWEVER, TO REITERATE THE CONCERNS THEY HAVE MADE KNOWN TO US BILATERALLY IN THE FULL ALLIANCE DISCUSSION OF THE ISSUE ON FEBRUARY 24. IF WE ARE TO HAVE THE FULL GERMAN SUPPORT FOR SALT II WHICH WE RECOGNIZE IS CRITICAL, IT BEHOOVES US TO GO AS FAR AS POSSIBLE ON THAT OCCASION IN ALLAYING THE GERMAN CONCERNS.

14. HOW FAR WE WILL BE ABLE TO GO IN THAT DIRECTION, AGAIN, IS A MATTER OUTSIDE OUR COMPETENCE. WE
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SUGGEST , HOWEVER, THAT IT MAY BE WORTHWHILE TO POINT TO THE PRACTICAL IMPOSSIBILITY OF DEVISING ACCEPTABLE TREATY LANGUAGE WHICH WOULD NEVER BE SUSCEPTIBLE TO DISPUTE IF THE SOVIETS CHOOSE SUBSEQUENTLY TO SEEK TO GIVE IT NEW MEANING. WHAT IS MORE IMPORTANT IS THE CLARITY WITH WHICH WE EXPRESS OUR OWN VIEWS ON THE MEANING OF THE LANGUAGE AND OUR INTENTION TO ADHERE TO THOSE VIEWS. WE THINK THE GERMANS WOULD WELCOME OUR SHARING WITH THE ENIRE ALLIANCE THE LEGAL INTERPRETATIONS WHICH WE HAVE GIVEN THE FRG BILATERALLY. BEYOND THAT IT WOULD BE DESIRABLE TO SPELL OUT AS SPECIFICALLY AS POSSIBLE OUR INTERPRETATIONS OF WHAT WILL BE PERMITTED IN THE WAY OF FUTURE IMPROVEMENTS OF THEATER DEFENSES. WHILE THE GERMANS HAVE WITHDRAWN THEIR SUGGESTION FOR SPECIFYING TO THE SOVIETS THE SYSTEMS WHICH WOULD BE COVERED BY THE NON-CIRCUMVENTION CLAUSE, IT MIGHT BE USEFUL FOR US TO SHARE WITH THE ALLIANCE OUR THOUGHTS ON THAT SUBJECT. TO THE EXTENT THAT WE ARE ABLE TO GO ON RECORD WITH THE FULL ALLIANCE AS TO WHAT LIMITATIONS WE WILL AND WILL NOT BE WILLING TO ACCEPT UNDER THE RUBRIC OF NON-CIRCUMVENTION, WE WILL BE INCREASING THE LIKELIHOOD OF GERMAN SUPPORT FOR THE AGREEMENT AS A WHOLE.
MEEHAN UNQUOTE. VANCE

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